



Docket No.: E005-4000

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of Wann

Serial No.: 09/704,769

Confirm. No.: 4376

Filed: November 3, 2000

For: CRYPTOGRAPHIC DEVICE

:
:
: Group Art Unit: 2137
:
: Examiner: Paul E. Callahan
:
:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The Applicant requests review of the rejection in the above-identified application, in accordance with the "New Pre-Appeal Brief Conference Pilot Program" announced in the July 12, 2005 USPTO Official Gazette.

In accordance with the requirements of the "New Pre-Appeal Brief Conference Pilot Program": No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is requested for the reasons stated in the following Remarks, which are no more than five (5) pages long.

REMARKS

Claims 7-32 are currently pending in the above-referenced patent application. **In the non-final Office Action mailed June 3, 2005:** Claims 7-21 were rejected under 35 U.S.C. § 102(a) as being anticipated by Harrison et al. (U.S. Patent No. 6,081,895)¹. Claims 22-26, 28-29, and 32 were rejected under 35 U.S.C. § 102(b) as being anticipated by van Rumpt et al. (U.S. Patent No. 5,513,262). Claims 27, 30, and 31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over van Rumpt et al.

In reply to the rejection of claims 7-21 under 35 U.S.C. § 102(a) as being anticipated by Harrison et al., reconsideration and withdrawal is respectfully requested. 35 U.S.C. § 102(a) states that "...the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent..."

However, a prima facie case under § 102(a) has not been established because no evidence has been presented that the date of the inventions claimed in claims 7-21 were after the publication date (June 27, 2000) of Harrison et al. At least for this reason, the requirements of 35 U.S.C. § 102(a) have not been satisfied and a prima facie case of anticipation has not been established.

Additionally, all of the recitations of claims 7-21 are not disclosed in Harrison et al. For example, unlike the recitations of claims 7-10, there is no disclosure in Harrison

¹ In an Office Action dated September 8, 2004, the Claims 7-21 were initially rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Harrison et al. (U.S. Patent No. 6,081,895). The Applicant's remarks dated March 8, 2005 in response to the Office Action are incorporated herein in their entirety.

et al. of "...at least one data stream interceptor..." Similar deficiencies of Harrison et al. exist as applied to claims 11-21.

In reply to the rejection of claims 22-26 and 28-29 under 35 U.S.C. § 102(b) as being anticipated by van Rumpt et al., reconsideration and withdrawal is respectfully requested. Claims 22-26 and 28-29 recite "...intercepted data is either encrypted or decrypted or unchanged at the data security apparatus in accordance with a predetermined communication protocol..." However, there is no disclosure of these recitations in van Rumpt et al.:

It is asserted on page 4 of the June 3, 2005 Office Action that these recitations are disclosed in van Rumpt et al. in column 2, lines 45-50. However, column 2, lines 45-50 merely disclose:

"The cipher unit 25 is of a current commercially available type, for instance one of the types supplied by the firm of Western Digital. Since the actual operation of the DES cipher algorithm is not important for a proper understanding of the present invention, except that it is necessary to know that encryption occurs word for word using the, 56-bit encryption key and that the words have a width of 64 bits, the operation of this algorithm will not be further explained."

However, this disclosure does not relate to a dependency on how data is handled (e.g. encryption, decryption, or unchanged) based on a communication protocol. Accordingly, the disclosure in column 2 lines 45-50 does not anticipate the recitations in claims 22-26 and 28-29 of "...intercepted data is either encrypted or decrypted or unchanged at the data security apparatus in accordance with a predetermined communication protocol..." At least for this reason, a prima facie case of anticipation has not been established.

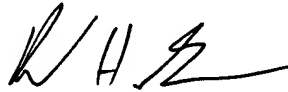
In reply to the rejection of claim 32 under 35 U.S.C. § 102(b) as being anticipated by van Rumpt et al., reconsideration and withdrawal is respectfully requested. Claim 32 recites "...intercepted data is either encrypted or decrypted or unchanged at the data security apparatus in accordance with a predetermined communication protocol..." However, there is no disclosure of these recitations in van Rumpt et al. for similar reasons as discussed above in the reply to the rejection of claims 22-26 and 28-29 under 35 U.S.C. § 102(b). At least for this reason, a prima facie case of anticipation has not been established.

In reply to the rejection of claims 27, 30, and 31 under 35 U.S.C. § 103(a) as being unpatentable over van Rumpt et al., reconsideration and withdrawal is respectfully requested. Claims 27, 30, and 31 recite "...intercepted data is either encrypted or decrypted or unchanged at the data security apparatus in accordance with a predetermined communication protocol..." However, there is no disclosure of these recitations in van Rumpt et al. for the same reasons as discussed above in the reply to the rejection of claims 22-26 and 28-29 under 35 U.S.C. § 102(b). At least for this reason, a prima facie case of obviousness has not been established.

CONCLUSION

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance. The Examiner is invited to contact the undersigned attorney(s), **Daniel H. Sherr** or **Natu J. Patel**, at the telephone number listed below, if any issues arise.

Respectfully submitted,
THE PATEL LAW FIRM, P.C.

A handwritten signature in black ink, appearing to read 'D H Sherr', with a stylized flourish at the end.

Daniel H. Sherr
Registration No. 46,425

2532 Dupont Drive
Irvine, CA 92612
(949) 955-1077
Date: September 2, 2005